

**REMARKS**

Claims 1-120 are pending in the present application.

Claims 13-23, 25-36, 49-76, and 79-120 have been allowed.

Claims 24, 51, 52, 53, 55, and 77 have been amended. This amendment obviates the Examiner's objection to Claims 56, 57, and 78. With these amendments, the Applicant introduces no new matter.

The Applicant has submitted ten drawings. Submission of these drawings does not introduce any new matter. The Applicant has amended the specification at page 3 to include a brief description of ten drawings. This amendment introduces no new matter.

The Applicant has also amended the specification at page 8, lines 5-20, to describe Figures 4 through 13. This amendment introduces no new matter.

**I. FORMAL MATTERS**

**Allowable Subject Matter**

Applicant thanks Examiner Layno for allowing the subject matter set forth in Claims 13-23, 25-36, 49-76, and 79-120.

**Drawing Objections**

37 C.F.R. § 1.83(a) reads:

The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box).

While the applicant believes detailed illustrations are not essential for a proper understanding of the claimed invention, the Applicant has provided ten drawings that

encompasses different embodiments of the present invention in an effort to advance prosecution.

**Claim Objections**

Per the Examiner's suggestion, the Applicant has amended the dependency of 51, 52, 53, and 55 to depend from Claim 49. This amendment also corrects the dependency of Claims 54, 56, and 57.

**Claim Rejection under 35 U.S.C. 112, 2<sup>nd</sup> Paragraph**

The Examiner has rejected Claim 24 based on 35 U.S.C. 112, second paragraph, as being indefinite for improper dependency. As the Examiner has suggested, the Applicant has amended Claim 24 to depend from Claim 23.

**II. PRIOR ART REJECTIONS**

**Rejections under 35 U.S.C. §102(b)**

The Examiner has rejected Claims 1-4 and 7-11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,263,480 issued to Wernicke et al. ("*Wernicke*"). The applicant respectfully traverses this rejection.

*Wernicke* is directed to a method and apparatus for treating patients with eating disorders and involves the application of an electrical stimulus to the esophagus of a patient. According to *Wernicke*, the electrical stimulus produces a sensation of satiety by stimulating the vagus nerve. The electrical stimulus generator of the *Wernicke* apparatus is implanted in a patient's body and connects to the esophagus by wire leads. According to the Examiner, electrodes attached to these wire leads inherently create an electric field when activated. But, as *Wernicke* Figure 3 shows, the electrodes are located on the outer surface of the esophagus. See

also Col. 8, lines 36-37 (stating that the electrodes are “secured to opposite sides of the patient’s esophagus”). Thus, if these electrodes were located within the esophagus, then one would likely swallow these electrodes when consuming foodstuffs.

In contrast to *Wernicke*, pending Claims 1-4 and 7-11 recite an “electrode positioned within the esophagus” of a patient rather than on the outer surface of the patient’s esophagus. See Claim 1. Thus, because *Wernicke* does not disclose electrodes located within the esophagus, it does not anticipate Claims 1-4 and 7-11 of the present invention. Therefore, the Applicant respectfully request withdrawal of this rejection.

**Rejections under 35 U.S.C. §102(e)**

The Examiner has rejected Claims 37-40, 47, and 48 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,782,874 issued to Loos (“*Loos*”). The Applicant respectfully traverses this rejection.

*Loos* discloses an apparatus for manipulation of the nervous system in which one uses two electrodes to apply a weak electrical field to the skin overlying the vagus nerve. Application of this weak electrical field interferes with sensory resonance patterns associated with the nervous system, thus eliciting a physiological response. See Col. 3, lines 40-55. Unlike pending Claims 37-40, 47, and 48, which recite stimulation of the vagus nerve, *Loos* states that the “applied electrical field is much too small to cause classical verve stimulation.” Col. 5, lines 34-35. Thus, because *Loos* does not disclose stimulation as recited in pending Claims 37-40, 47, and 48, *Loos* does not anticipate Claims 37-40, 47, and 48. For this reason, the Applicant respectfully requests withdrawal of this rejection.

CONCLUSION

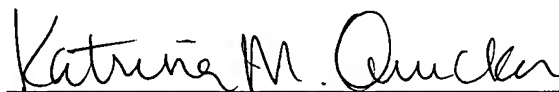
For at least the reasons given above, Applicant submits that Claims 1-4, 7-11, 24, 37-40, 47 and 48 and Claims 5, 6, 12, 41-46, 51-57, 77, and 78 define patentable subject matter. Accordingly, Applicant respectfully requests allowance of these claims.

The foregoing is submitted as a full and complete Response to the Office Action mailed September 30, 2004, and early and favorable consideration of the claims is requested.

Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Applicant respectfully requests that the Examiner contact Applicant's representative at the telephone number listed below.

No additional fees are believed due; however, the Applicant hereby authorizes the Commissioner to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,



Katrina M. Quicker, Esq.  
Reg. No. 55,554

KILPATRICK STOCKTON LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530  
Phone: (404) 815-6500  
Fax: (404) 815-6555  
Attorney Docket: 16294-0134 (52433-269130)